

BRIEF IN SUPPORT OF PETITION.

Argument.

Section 10(f) of the National Labor Relations Act provides as follows:

“(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.”

Pursuant to such section petitioner on August 26, 1940 filed with the United States Circuit Court of Appeals for the Seventh Circuit a written petition for review praying that this Court set aside an order of the National Labor

Relations Board dated July 3, 1940 (Transcript of Record, pp. 1-6). There is no question but that petitioner was a "person aggrieved" by such order, nor is there any question but that petitioner transacted business in the Seventh Circuit, and petitioner contends, therefore, that upon the filing of its petition in the Seventh Circuit that court was vested with jurisdiction of this proceeding and could only be divested of such jurisdiction in the event the Board desired to reopen the proceedings or to vacate or modify its order. *In re Labor Board*, 304 U. S. 486.

It is, of course, true that after the filing of the petition for review the petitioner is required to file in the Circuit Court of Appeals a transcript of the entire record. However, Section 10(f) expressly provides that such transcript shall be "certified by the Board". It is readily apparent that a petitioner under Section 10(f) can do no more than to request the Board to furnish or file with the Court the required certified copy of the transcript. This your petitioner did immediately after filing its petition for review, notwithstanding which the Board, five days after the petition for review had been filed and two days after the Board had received petitioner's demand for a certified transcript of the record, proceeded to file a petition for enforcement in the Second Circuit and filed the transcript in that circuit (Transcript of Record, pp. 8, 25, 26). In so doing the Board showed no intention to retain the case but rather endeavored deliberately to deprive the Seventh Circuit of the jurisdiction vested in it by Section 10(f) of the Act and to vest jurisdiction of this proceeding in the Second Circuit.

There can be no doubt, upon reading Sections 10(e) and 10(f) of the Act, that Congress intended that an order of the Board could be reviewed by a circuit court of appeals in either of two ways: (1) by the filing of a petition for enforcement by the Board (Section 10(e)) or (2) by the

filing of a petition for review by an aggrieved person (Section 10(f)). This is plainly indicated by the fact that these alternative remedies are set forth in two separate and distinct paragraphs of the Act.

If the Board is correct in its position, then Section 10(f) is of no force and effect, since the Board, having the sole power to certify the transcript of the record, can alone determine which circuit court shall have jurisdiction of the controversy, and an "aggrieved person" may thereby be deprived of the right to seek a review of an order of the Board contrary to the express purpose and intent of the statute itself.

If the Act is to be construed as it is construed by the Board and by the Circuit Court of Appeals for the Seventh Circuit (by reason of the decision of that court dismissing the petition for review herein), then the Board may in any case refuse to certify the transcript and thereby prevent an "aggrieved person" from ever obtaining a review. Such a construction of the Act would completely nullify the effectiveness of Section 10(f) and would fly directly in the teeth of the intent of Congress, an intent for which this Court has always had the most scrupulous regard.

The inequity of such a situation was recognized by this Court in *In re Labor Board*, 304 U. S. 486, as clearly appears from the opinion in that case in which it was said:

"The contention that the Act cannot be applied in accordance with its apparent intent is that, as only the Board can certify the proceedings, and the petitioner under subsection (f) must file the certified transcript, such a construction would enable the Board to hold the transcript for an indefinite period and thus harass and embarrass a litigant, and delay, and perhaps deny, any effective, judicial review. *No such case is here presented. We have no occasion to determine what, if any, relief may be needed by or*

available to a party who has filed his petition for review, where the Board does not desire to modify or set aside its order but fails or refuses to furnish a transcript of its proceedings." (Italics ours.)

The question referred to is squarely raised in the instant case.

Conclusion.

For the foregoing reasons, it is submitted that this petition for a writ of certiorari should be granted.

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